**THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

**WRIT PETITION No.3785 OF 2006**

**Dated: 06-03-2006**

**Between**

G. Vasudeva Rao, S/o. Narasimha Rao,

Occ: Business, R/o. D.No.10-47,

Sri Sai Simha Towers, Indira Nagar,

Gopalapatnam, Visakhapatnam District.

...PETITIONER

**AND**

The Visakhapatnam Municipal Corporation,

Rep. by its Commissioner, Visakhapatnam.

...RESPONDENT

**ORDER:**

Petitioner seeks a Writ of Mandamus to declare the action of the respondent in passing speaking order-cum-notice under Section 636 of Hyderabad Municipal Corporation Act, 1995 (for short 'the Act')
r/w Section 7 of Visakhapatnam Municipal Corporation Act on 23.02.2006 as illegal and arbitrary.

Learned counsel for the petitioner submits that the respondent – corporation granted permission sanctioning plans in favour of the petitioner for construction of a building vide proceedings No.BA 342/2000/ACP-III dated 11.04.2001 for cellar floor and on 08.01.2002

for other floors. Accordingly, as per the approved plans petitioner constructed Ground + 4 floors. While so, the respondent – corporation issued a notice dated 22.10.2003 under Section 452 of the Act alleging that there are certain deviations i.e. constructing a pent house over and above the fourth floor. Aggrieved by the same, petitioner field a civil suit in O.S.No.3112 of 2003 on the file of the IV Junior Civil Judge, Visakhapatnam and obtained interim injunction but ultimately the suit was dismissed. In the said suit the petitioner filed two petitions to set aside the default order and to condone the delay in filing the set aside petitioner, which are pending before the trial Court. As the suit was dismissed the respondent – corporation issued a show cause notice dated 17.01.2006 in U.C.No.1/2006 directing the petitioner to show cause as to why appropriate action shall not taken against the unauthorized construction. Aggrieved by the same petitioner filed WP.No.1348 of 2006 on the file of this Court and the said WP was disposed of directing the respondent to consider the representation of the petitioner dated 24.01.2006 and pass a fresh order and till then the respondent was directed to maintain status quo.

The learned counsel further submits that the said representation dated 24.01.2006 has not been received by the respondent – corporation and accordingly, the petitioner was called upon to remove the unauthorized construction of pent house within 24 hours by the impugned notice dated 23.02.2006.

On getting instructions from the respondent – corporation,
the learned counsel for the respondent – corporation submits that the representation filed by the petitioner on 24.01.2006 is not traced out. However, the petitioner filed another representation dated 27.02.2006.

Having regard to the facts and circumstances of the case,
the writ petition is disposed of directing the respondent – corporation to consider and dispose of the said representation of the petitioner dated 27.02.2006 within ten days from the date of receipt of a copy of this of order.

_____

V. ESWARAIAH, J

March 6, 2006

DSK